Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF SPRINT CORPORATION

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036
(202) 857-1030

July 1, 1996

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY........................ 1

III. ISSUES

A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES.................................... 4

2. Discussion................................. 4

a. Scope of Payphone Calls Covered by this Rulemaking.................... 4

b. Entities Required to Pay Compensation.......................... 11

c. Ability of Carriers to Track Calls from Payphones........................ 13

d. Administration of Per-Call Compensation.......................... 14

e. Per-Call Compensation Amount.......... 16

B. RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES.. 25

2. Discussion................................. 25

a. Classification of LEC Payphones as CPE................................ 25

b. Transfer of Payphone Equipment to an Unregulated Status................. 26

c. Termination of Access Charge Compensation and Other Subsidies...... 27

C. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE............................ 28

TABLE OF CONTENTS (cont'd)

D. ABILITY OF BOCS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTERLATA CARRIER 29

E. ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER 31

F. ESTABLISHMENT OF PUBLIC INTEREST PAYPHONES 31

G. OTHER ISSUES 32

1. Dialing Parity 32

2. Letterless Keypads 33

CONCLUSION 33

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 96-254, released June 6, 1996).

I. INTRODUCTION AND SUMMARY

Section 276, in addition to requiring deregulation of LEC payphones, directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone... ." Sprint is deeply concerned that the NPRM reflects a "Fire, Ready, Aim" approach to payphone compensation. The Commission appears ready to embark on the creation of an entitlement program for the benefit of both local exchange carriers and private payphone owners (PPOs) without first requiring any clear demonstration of need for revenues, over and above those within the payphone providers' control, to "fairly" compensate them for the costs (if any) they incur when consumers use their phones for other calls. Although the payphone industry is clearly entitled by statute to fair compensation for the calls made from their phones, to the extent that they are already recovering their costs, any compensation ordered by the Commission will be a windfall for payphone service providers (PSPs) and will encourage uneconomic entry into the payphone business. Sprint Corporation, whose operations include both those of a long distance carrier that will be forced to pay this compensation in the first instance, and a LEC whose 50,000 payphones will qualify it as a recipient of such compensation, urges the Commission to keep foremost in mind that ultimately, consumers of telecommunications services will have to pay for this entitlement program, and Sprint urges the Commission to take all necessary measures to ensure that any compensation it orders does not result in windfall profits.

With respect to other issues raised in the NPRM, Sprint supports excluding 0+ calls from a per-call compensation plan, but in addition, §226(e)(2) appears to preclude per-call compensation for any type of call handled by the 0+ carrier. Moreover, there is no statutory basis for making international calls eligible for compensation. Local coin calls should continue to be regulated by state commissions.

Sprint supports the "set use fee" approach to compensation, and believes that IXCs are the only carriers that can track compensable calls, but they will need time to develop the systems to do so. There is no basis for requiring IXCs to collect and remit per-call charges for calls from unverified ANIs. Furthermore, it should be the responsibility of PSPs to verify that their payphones generate the 07 and 27 digits used to track compensable calls. IXCs should remit payments to PSPs on a quarterly basis, unless the compensation owed to a particular PSP is less than $10.00 (in which case, payment should be deferred until the cumulative amount owed reaches $10.00, or deferred for up to one year, whichever comes first).

LEC payphones should be transferred to nonregulated accounts at net book cost, and access charges should be reduced to offset the payphone subsidies presently embedded in such charges. LECs should offer coin transmission service as a tariffed offering.

LECs should have the same right as PPOs to participate in the selection of the 0+ carrier for interLATA and intraLATA calls. Whether "public interest" payphones should be maintained and funded should be treated as a universal service issue to be handled by states in a competitively neutral manner.

Finally, dialing parity and unblocking requirements should apply to payphone providers for local and long distance calls, and letterless keypads should be prohibited.

As requested in ¶90, these comments will follow the outline of the NPRM.

III. ISSUES

A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

2. Discussion

a. Scope of Payphone Calls Covered by this Rulemaking

In ¶16, the Commission tentatively concludes that the mandate in §276(b)(1)(A) to ensure that PSPs are "fairly compensated for each and every completed...call" should result in a prescription of compensation only when payphone providers are not fairly compensated. In that regard, the Commission tentatively concludes that per-call compensation should not be prescribed for 0+ calls because competition ensures "fair" compensation for PSPs.

Sprint supports the conclusion that additional compensation should be prescribed only when payphone providers are already not "fairly" compensated. The use of the preposition "for," instead of "on," in the phrase "fairly compensated for each and every completed intrastate and interstate call" clearly suggests that if a payphone provider already receives sufficient revenues from calls within its control (e.g., local coin calls or, in the case of some PSPs, 0+ calls) to fairly compensate it for the costs of all calls made from its payphones, then there is no need whatsoever for per-call compensation for these other types of calls. It would make no sense to read the statutory language as requiring that compensation be paid to the PSPs "on" all such calls, regardless of the PSPs' other revenues, since that would give no meaning to the limitation that such compensation be "fair[]." Had Congress intended to create a windfall profit entitlement program for PSPs, there would have been no need to restrict the compensation to a fair level.

Thus, although Sprint supports the exclusion of 0+ calls from any compensation plan the Commission should ultimately adopt, the Commission should not assume that all other calls should trigger per-call compensation unless or until the Commission finds that the PSPs are not fairly compensated for such calls today. Otherwise, any compensation that they receive for such calls will simply be a windfall (either to themselves or to premises owners), at the expense of consumers, unless the Commission were to require the PSPs to lower the amount of commissions they accept on 0+ calls (which is obviously impractical) or to lower their rates for local coin calls (which Sprint believes is unduly intrusive into state commission jurisdiction). Accordingly, before any further consideration of whether to institute a per-call compensation plan, the Commission first should gather comprehensive data on the costs and revenues of PSPs, particularly including the marginal costs (if any) of handling uncompensated calls (such as dial-around operator services or calling card calls, subscriber 800/888 toll free calls, etc.).[1] It should then analyze these data with the view toward setting per-call compensation (if any proves necessary) on the basis of the costs of an efficient payphone provider.[2]

Moreover, all calls handled by the presubscribed 0+ carrier (including dial-around calls, subscriber toll free calls (TFCs) and debit card calls) -- not just 0+ calls -- would appear to be excluded from a per-call compensation scheme by virtue of §226(e)(2). The Commission has interpreted this provision to mean that

> ...any call handled by the prescribed OSP, even if initiated via an access code, would not be compensated under a prescribed system but would be dealt with in the agreement between the payphone owner and the presubscribed OSP.

Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation ("Operator Service Access"), 6 FCC Rcd 4736, n.123 at 4745 (1991)). If, as the Commission believes

---

[1] In n.54 at ¶16, the Commission appears to have adopted marginal costs as the appropriate costs to recover from per-call compensation.

[2] The Commission has in the past based rates in competitive market segments on the basis of the most efficient bellwether carrier. See ITT World Communications, Inc., 82 FCC 2d 282, 285-86 (1980), 85 FCC 2d 561, 567 (1981); The Western Union Telegraph Co., 25 FCC 535, 580 (1958); Charges for Communications Service Between the United States and Overseas and Foreign Points, 12 FCC 29, 62 (1947); and Postal Telegraph-Cable Co. et al., 5 FCC 524, 527 (1938).

(see NPRM at ¶27), this statutory provision remains in force, then the Commission-prescribed compensation should not apply to any calls carried by the presubscribed 0+ IXC.

The Commission also is incorrect in assuming, as it does in ¶15, that "non-BOC LECs receive compensation, pursuant to individual contracts, from the payphone's presubscribed IXC for all 0+ calls" (footnoted omitted). As the NPRM later recognizes (n.194 at ¶69), the GTE Companies, like the BOCs, were required, under their antitrust consent decree, to allow premises owners to presubscribe their payphones for 0+ calls.[3] In addition, many other large independent LECs, including the Sprint LECs, have allowed the premises owners to select the presubscribed 0+ carrier from their payphones. Thus, by and large, neither the RBOCs nor many major independent LECs receive any compensation from the presubscribed IXC for 0+ interLATA calls.[4]

---

[3] U.S. v. GTE Corporation, Civil Action No. 83-1298 (HHG), Memorandum filed December 23, 1988.

[4] As a result, they will be at something of a competitive disadvantage, vis-à-vis PPOs, regardless of whether only 0+ calls are excluded from compensation (as the Commission has proposed) or if all calls via the presubscribed 0+ carrier are excluded (as Sprint has proposed herein). However, as long as LECs are given the same right that PPOs now enjoy to participate in the selection of the presubscribed IXC, Sprint believes that the business disadvantage that will be faced by the LECs should be transitional and short-lived.

On the other hand, the LECs today handle nearly all intraLATA 0+ calls, and thus enjoy a revenue stream that is largely foreclosed to PPOs. However, under §276(b)(1)(E), all PSPs will be able to participate in the selection of the intraLATA

In ¶¶17-18, the Commission tentatively concludes that it should prescribe compensation standards for all access code calls, subscriber 800 and other toll free calls, and debit card calls, and that the eligible calls include intrastate, interstate and international. As explained above, §226(e)(2) appears to preclude Commission-prescribed compensation for any calls handled by the presubscribed carrier. In addition, there is no statutory foundation for including international calls in a per-call compensation program. There is no basis for assuming, as the Commission does, that Congress intended to include international calls when it expressly referred only to "intrastate and interstate" calls. Furthermore, the Commission cannot infer such authority from §§4(i) and 201(b). Section 4(i) limits the Commission to actions "not inconsistent with this Act," and §201(b) has no apparent relevance to payments by carriers to providers of telecommunications equipment. In short, the plain exclusion of international calls from the scope of §276(b)(1)(A) must be honored by the Commission.[5]

0+ carrier, thereby creating a new source of revenues for PPOs.

[5] Even if the exclusion of international calls was not conscious, but merely reflected sloppy draftsmanship, there is no reason to make IXCs or their customers pay for any such imprecision.

In ¶¶19-22, the Commission seeks comment on three options for local coin calls: (1) setting a nationwide local coin rate for all payphone calls; (2) prescribing national guidelines to be utilized by the states; and (3) allowing the states, in the first instance, to continue to set coin rates for local calls.

Sprint believes the third option is the preferable one. To begin with, the local coin rate covers far more than the cost of the telephone instrument itself: it includes the cost of transporting the call from the payphone to the called party within the local calling area, the cost of switching that call, the cost of the central office equipment needed for coin service, as well as the cost of periodically collecting coins from the payphone. Commission prescription of rates for local coin calls, or even establishment of guidelines for such rates, would be unnecessarily intrusive into the states' jurisdiction. It would also require the Commission to gather and analyze detailed data from all payphone providers on their transmission, switching, central office and coin collection costs, data that this Commission now does not systematically obtain. There is no reason to assume that in setting local coin rates, state commissions will not make an adequate allowance for the marginal cost of the use of the instrument itself. Thus, as a matter of comity, Sprint believes the Commission should exclude local coin calls from consideration in this proceeding. The Commission does have jurisdiction under §276(c) to preempt inconsistent state regulations, but the Commission should exercise such jurisdiction only upon a compelling showing by the payphone service providers (PSPs) serving a particular state that the local coin rates in that state, together with the other revenues received by the PSPs, are not compensatory for an efficient service provider in that state.

In ¶22, the Commission also seeks comment on whether it should treat intraLATA 0+ toll calls carried by the presubscribed intraLATA carrier differently from local coin calls or treat them like local coin calls. As in the case of local coin calls, Sprint does not believe the Commission should attempt to establish rates for 0+ intraLATA calls. Moreover, since §276(b)(1)(E) gives all PSPs the right to participate in the selection of the 0+ intraLATA carrier, the PSPs can be expected to receive commission payments on such calls, and thus such calls -- like 0+ interLATA calls, should not be eligible for per-call compensation. On the other hand, the Commission should make clear that its actions in this docket supersede any set use fees or similar compensation mechanisms previously adopted by state commissions for intrastate calls.

In ¶23, with respect to subscriber toll free calls, the Commission asks for comment on what rules, if any, the Commission should adopt to prevent fraudulent use of autodialers by payphone providers as a means of generating revenue from the phone. It was Sprint (then United Telecommunications Corp.) that first raised this concern before the Commission.[6] The incentive to engage in such fraudulent conduct is directly proportional to the level of per-call compensation: the greater the amount of compensation per call, the more profitable it would be for an unscrupulous payphone provider to inflate its compensable revenues either by using an autodialer or employing a person to make repeated compensable calls. The best way to minimize such fraud is to make absolutely sure that the level of prescribed compensation is no greater than the marginal cost of the use of the phone.

b. Entities Required to Pay Compensation

In ¶¶24-28, the Commission discusses three possible means of collecting and remitting compensation to the PSPs. It tentatively rejects the concept of requiring the calling party to deposit coins into the payphone before placing any call, on the grounds that it is precluded from doing so by §226(e)(2) and that such an approach would unduly burden many transient payphone users. Two other methods described by the Commission are "carrier pays," in which the IXC receiving the call from a payphone would be required to pay a per-call charge to the payphone provider and would decide independently how to

---

[6] See Operator Service Access, supra, 6 FCC Rcd at 4746 (n.135).

recover this cost, and the "set use fee" system, under which the IXC would bill and collect the per-call charge from the same end user that is billed for the call itself, and would remit the per-call charges, less a billing and collection fee, to the PSP. The Commission tentatively favors the "carrier pays" method based on its belief that it would result in lower transaction costs.

Sprint urges the Commission to adopt the "set use fee" approach instead. In contrast to the "carrier pays" mechanism, in which cost of per-call compensation may be averaged with other costs and recovered through the transmission charges levied on all calls, the "set use fee," appearing as a separate line item on the bill of the party paying for the call, gives visibility to the public of the cost of the per-call compensation program, which should be an incentive to keep the costs of the program at the lowest level consistent with fairness to PSPs. Consumers are entitled to know what they are being required, through the actions of the legislature, if not this Commission, to pay for. Thus, the visibility of the set use fee approach far outweighs the additional transaction costs that may be involved.

The Commission should make clear that the set use fee is a government-mandated fee, for which the IXCs are simply acting as conduits between the PSPs and the consumers responsible for paying the fee, and that the fee should not be considered as taxable revenues for the IXCs. The IXCs should also be allowed a reasonable period of time -- a minimum of 12-15 months -- to make the system modifications necessary to track completed calls and pass through the set use fee, for each call type, to the paying customer.[7]

c. Ability of Carriers to Track Calls from Payphones

In ¶¶30-31, the Commission tentatively concludes that IXCs should be required to track payphone calls and, for a 2-year period, to initiate an annual independent verification of their tracking systems.

Sprint agrees. Even though, as discussed above, IXCs will need additional time to develop the systems necessary to accurately track all types of completed calls,[8] only the IXCs

---

[7] For pre-paid card calls, the pass-through must occur on a real-time basis, i.e., the IXC must be able to recognize that a call is coming from a payphone at the time it is processing the call, and must debit the card with the per-call charge. Even under the "carrier pays" approach, substantial time would be needed to perfect call-tracking systems. In Sprint's case, although it can track completed dial-around operator services calls and subscriber TFCs, additional development efforts are needed to track completed prepaid card calls that originate from payphones.

[8] Section 276(b)(1)(A), by its terms, limits compensation only to completed calls. This term should be defined as calls that produce revenue for the IXC. Thus, for example, a prepaid card call that reaches a busy or no-answer number, or is made only to check on the amount of time remaining on the card, would not be a completed call. On the other hand, when multiple calls are made on a single connection (a feature offered by Sprint's FONcard by pressing the # key to reoriginate a second or third call on the same connection to its calling card platform), each such call should be subject to the set use fee.

are in a position to do so. Although Ameritech, in seeking a waiver from Part 69 in order to establish a "set use fee" for calls from its payphones, had represented to the Commission that it could distinguish completed from uncompleted calls, it subsequently admitted, in defending its tariff filing to implement that waiver, that it could not do so.[9] Furthermore, call tracking by IXCs is part and parcel of the set use fee concept that, as also discussed above, Sprint supports.

d. Administration of Per-Call Compensation

The Commission proposes (¶33) to continue direct billing arrangements between PPOs and IXCs, to require IXCs to send to each PSP a statement indicating the number of compensable calls that it has received from that PSP's payphones, and to require the IXC to file an annual report with the Commission listing the total amount of compensation paid to PSPs, the number of compensable calls and the number of payees. In ¶34, the Commission proposes to use the ANI as the basis for tracking, and to require "intraLATA" carriers[10] to (a) provide a list of payphone ANIs to IXCs within 30 days of the close of

[9] Ameritech's admission is discussed in Sprint's April 8, 1996 letter to Mr. James Schlichting, Chief, Tariff Division, regarding Ameritech Transmittal No. 953. Since, so far as Sprint is aware, no LEC can accurately track completed calls from its payphones, there is no point in requiring the LECs to make tracking services available to the PPOs.

[10] Sprint assumes the intended reference is to the LECs (including competitive local exchange carriers).

each compensation period, and (b) to verify disputed ANIs, on request, in a timely fashion. The Commission proposes that if the intraLATA carrier fails to provide either positive or negative verification of a claimed ANI from a PSP, the IXC "could" be required to pay compensation on that ANI but would allow IXCs to refuse payment for compensation claims that are submitted long after they were due.

For the most part, Sprint supports these proposals. However, there is no basis for requiring IXCs to pay compensation on ANIs that are not positively verified by the LEC. If, contrary to the Commission's proposals, the LEC fails to provide timely verification of disputed ANIs, no liability should fall on the IXC.

Furthermore, although the Commission (in ¶34) implicitly sets a quarterly compensation period, Sprint believes that there must be a reasonable balance between the administrative costs to the IXC in making the compensation payments, on the one hand, and the frequency of payment to PSPs, on the other. Sprint recommends that the Commission's rules provide that if the amount owed by an IXC to a PSP is less than $10.00 in any calendar quarter, the IXC should be allowed to defer payment until the cumulative amount owed to that PSP reaches $10.00, or to defer payment for up to one year, whichever comes first. When it commenced paying dial-around compensation ordered in CC Docket No. 91-35 on a per-call basis, Sprint found that nearly one-third of the checks it sent out for the first quarter's payments were for amounts less than $10.00, and one-fifth of the checks were for an amount less than $5.00. By contrast, the internal costs of producing and mailing each check (not including the costs of reviewing calling records to determine how much each PPO was entitled to) amounted to $3.14. Sprint believes that its proposal to vary the payment period depending on the amount owed is a reasonable accommodation of the legitimate interests of both parties.

In addition, the Commission is over-simplifying in suggesting that ANIs would be the basis of per-call tracking. In paying dial-around compensation to PPOs on a per-call basis, Sprint utilizes both the information digits and the ANI. Unless the payphone generates the 07 or 27 digits, Sprint will not gather and maintain tracking data on compensable calls. It should be incumbent on the PSP to ensure that calls from its phones are sending out the proper information digits. Otherwise, IXCs would be forced to maintain, and sort through, call detail records on all calls received from all phones, which would add substantially to the transaction costs they would have to bear.

e. Per-Call Compensation Amount

In ¶38, the Commission tentatively concludes that "fair" compensation to PSPs should be based on "appropriate cost-based surrogates" and seeks comments on what such a surrogate might be. In approaching the level of compensation, the Commission should bear in mind that ultimately, it is the public that must bear the costs of any compensation program. The Commission will be abdicating its responsibilities to the public if it institutes a compensation program without careful consideration, on a full record, of what constitutes a "fair" level of compensation. Furthermore, prescribing an excessive level of compensation may not, in the long run, be doing the payphone industry any favors, either. If the costs to the IXCs (and their customers) of handling calls from payphones are too great, IXCs may institute two-tier price structures that impose higher charges on calls made from payphones, so as to discourage the use of payphones and encourage the use of more economical means of placing interexchange calls.

Sprint believes that costs must be the touchstone of any determination of what constitutes "fair" compensation. Unfortunately, as far as Sprint is aware, the Commission lacks the comprehensive data -- either from PPOs or LECs -- necessary to determine the amount and nature of payphone costs and revenue streams. Sprint believes the Commission would be fully justified in deferring the institution of any compensation program until it is satisfied, based on evidence supplied by those who are to be the recipients of such compensation, that such compensation is needed to "fairly compensate" the PSPs for the calls in question. The Commission should bear in mind the vast majority of payphones are placed -- by LECs and PPOs alike -- voluntarily, presumably with the expectation that they will generate sufficient revenues for their owners, whether through local coin calls, intraLATA toll calls, and/or commissions from 0+ carriers, to cover all their costs and yield a reasonable profit. In the absence of compelling evidence to the contrary, there is no reason for the Commission to assume that these existing revenue streams are not sufficient to compensate the PSPs for all of the costs they incur in handling all of the calls made from their payphones, including the "dial-around" and subscriber 800 calls from which they receive no direct revenue.

In addition, Sprint believes that the costs of handling the uncompensated calls in question are quite low. Aside from a de minimis cost associated with the wear and tear of using the key pad and lifting the handset off the cradle, there are no usage-related costs of having a payphone used to make a dial-around, or subscriber TFC or prepaid card call.[11] If

[11] There may be opportunity costs if a person is using a payphone for such calls at a time when other users wish to use the phone to place a local call or 0+ call and decide to walk away rather than wait for the phone to become available. However, if the phone is one of many in the same location, there may be no opportunity cost even in this circumstance, if the would-be caller is able to find another phone, owned by the same PSP, from which to place the call.

there are significant and demonstrable costs, payphone service providers are clearly entitled to recover them. However, unless or until the amount of such costs can be accurately demonstrated by those asking for compensation, Sprint believes the Commission would be entitled to rely on the other revenue streams available to PSPs as a means of "fairly compensating" them for "each and every" call placed from their phones.

In ¶36, the Commission discusses various bases used in the past to set compensation to private payphone owners. The initial $6.00 per line per month compensation was based on three factors: an amount equal to one-half of the estimated LEC payphone costs attributed to interstate access charges, the amount LECs charge for operator transfer services (i.e., 0- calls transferred by a live operator to an operator service provider selected by the calling party), and the average commission payments paid by AT&T on 0+ calls.[12] The LECs' interstate-allocated payphone costs are irrelevant if the LECs already recover those costs from other revenue streams. The other two factors -- operator transfer service charges and AT&T's commission payments -- have nothing whatsoever to do

---

[12] This last approach is incorrectly described in ¶36 of the notice as "AT&T's federally regulated operator service rates on calls made from payphones presubscribed to AT&T." The Commission's Order, cited at n.96, referred to AT&T's commission payments -- which have never been regulated by this Commission -- rather than its operator services rates, which, in the past, were subject to some regulatory constraints.

with the marginal costs of making a payphone available for a call. The rate for an operator transfer service by definition represents a payment to a monopoly service provider for a service that involves the labor cost of live operators in order to receive the call, while commission payments to private payphone owners reflect the monopoly rents that PPOs (and/or the premises owner) can extract from OSPs in the bidding war for 0+ presubscription, and have no direct link to the costs incurred by PPOs in making phones available for non-0+ calls. Moreover, the Commission's reliance on commission payments as a determinant of dial-around compensation was flatly inconsistent with the Commission's rejection of the PPOs' argument that dial-around compensation should be based on the revenues foregone when consumers dial around the presubscribed carrier.[13] Thus, the factors employed by the Commission in prescribing dial-around compensation at $6 per month are irrelevant for present purposes.

The Commission also points to Ameritech's Transmittal No. 953, in which it established a rate of $.256 as a set use fee for all calls from its payphones. However, Ameritech failed to provide any meaningful description of how it allocated the costs to be recovered by the set use fee and how it measured the demand used to obtain its unit charge. Furthermore,

---

[13] See Policies and Rules Concerning Operator Service and Pay Telephone Compensation, 7 FCC Rcd 3251, 3255 (1992).

Ameritech failed to show other revenue streams generated by its payphones. Thus, Ameritech's tariff is likewise not probative evidence of costs of, or the need for, per-call compensation.

Sprint continues to maintain that a useful approach to determining payphone costs is that described in the Commission's Further Notice of Proposed Rulemaking in Operator Service Access, 6 FCC Rcd 4736, 4747 (1991), where the Commission estimated, based on data for LEC payphones, that the cost of providing pay telephones exclusive of transmission and coin collection amount to $.12 per call. However, that represents an average cost, not the marginal cost concept the Commission appears to have adopted for these purposes (see n.54 at ¶16), and in any event that approach ignores the other sources of revenue that may already be covering these costs.

In ¶36, the Commission also cites the dial-around compensation rate of $.25 per call now being paid by AT&T and Sprint. As explained above, Sprint believes that costs should be the touchstone of §276 compensation and that the Commission should not proceed to prescribe such compensation in the absence of any cost data. However, the $.25 per call dial-around rate, properly adjusted downward for call volumes, may be a useful indication of the maximum permissible rate for §276 purposes. That rate, which represented a substantial reduction from the $.40 per call rate implicit in the

Commission-prescribed $6.00 per line per month, was the product of a negotiated agreement between AT&T -- by far the largest IXC -- and the American Public Communications Council (APCC) -- the major trade association for the PPO industry. At the time this per-call charge was agreed to by APCC, the private payphone industry had no assurance that it would ever receive per-call compensation for any other type of non-revenue-generating calls, such as subscriber TFCs or prepaid card calls.[14] Thus, Sprint believes it is reasonable to infer that in agreeing to per-call compensation in the amount of $.25 for each dial-around operator services call, the private payphone industry must have believed that the compensation produced by this charge would be sufficient to cover the PPOs' costs of all non-revenue-producing calls, including the costs of handling subscriber TFCs and prepaid card calls.

However, if per-call compensation is to be paid on this larger universe of call types, the unit charge must be reduced accordingly, so as to avoid over-recovery. There are substantial data in other Commission proceedings, regarding relative call volumes for dial-around operator services calls and subscriber TFCs, that can be used to adjust this charge. First, Sprint conducted a study, at the Bureau's request, of

[14] The Florida Payphone case (cited at n.40 of the NPRM) had not yet been briefed and argued, and thus it was unsettled whether the Commission could even consider whether subscriber TFCs should be included in dial-around compensation.